

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q77147
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/647,447	Filed August 26, 2003
	First Named Inventor Akihiro HASHIMOTO	
	Art Unit 2627	Examiner Daniell L. Negron

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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am an attorney or agent of record.

Registration number 52,778



Signature

Diallo T. Crenshaw
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May 29, 2007
Date

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q77147

Akihiro HASHIMOTO

Appln. No.: 10/647,447

Group Art Unit: 2627

Confirmation No.: 1646

Examiner: Daniell L. Negron

Filed: August 26, 2003

For: RECORDING MEDIUM CARTRIDGE AND RECORDING REPRODUCING APPARATUS THEREFOR

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated February 28, 2007, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claims 4 and 7 are allowed, and are not the subject of this Pre-Appeal Brief Request for Review. Claims 1 and 10 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Riches et al. (U.S. Patent Application Publication No. 2002/0035695). Claim 13 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Riches. Claims 16 and 19 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Riches in view of Malakapalli et al (U.S. Patent No. 6,467,060).

§ 102(b) Rejections (Riches) - Claims 1 and 10

With respect to independent claim 1, Applicants submit that Riches does not disclose or suggest at least, "wherein a first cyclic redundancy checking (CRC) code produced from data recorded in said recording medium is recorded in said cartridge memory and then secured in an unrewritable state," as recited in claim 1. That is, Applicants submit that the counter in Riches is not used to prevent previously written data from being rewritten or deleted. Riches only teaches that a tape is indicated as read only after determining that a predetermined number of entries to the tape have been exceeded. There is no teaching or disclosure in Riches of a counter being used to prevent previously written data from being rewritten or deleted. For example, paragraph 93 of Riches suggests that data can be rewritten via an erase command. Furthermore, there is no teaching or suggestion in Riches that data cannot be rewritten to a data block that has been previously written to.

Yet further, Applicants submit that the Examiner appears to be reading into the applied reference teachings that are not there. For example, contrary to the Examiner's assertions, there is no teaching or suggestion in Riches that after data is written and after the memory no longer has the capacity to store more data, a flag is set to report that the tape is read only. The tape is made read-only when a particular counter gets to a particular number. There is no teaching or suggestion that the particular number discussed in Riches corresponds to the memory no longer having the capacity to store more data. Nowhere do the cited portions of Riches disclose or suggest this much.

In response to the arguments above, the Examiner alleges (in the Office Action dated February 28, 2007):

Examiner however, respectfully disagrees because by incrementing after every entry, the counter prevents data from being written to a location where an entry has previously been written. The counter in Riches et al does not decrement nor does it reset to zero, therefore data is not written to previously written locations. Furthermore, as discussed previously, the counter enables a flag to be issued which prevents data to be written to the tape. Therefore, it is considered that the counter in Riches et al prevents data from being written to locations in the cartridge memory as well as to the tape. As discussed in the previous actions, the above characteristics are anticipated by the reference and meet the limitations of Applicant's invention as claimed. In response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the features upon which Applicant relies (i.e., after data is written and after the memory no longer has the capacity to store more data, a flag is set to report that the tape is read only) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to these arguments, Applicants submit that there is no teaching or suggestion in Riches that the counter prevents data from being written to a location where an entry has previously been written, based on an incrementing operation of a counter. The Examiner alleges that the above-discussed counter prevents data from being written to a location where an entry has previously been written after every entry. There is no teaching or suggestion of this in Riches. The Examiner has obviously utilized impermissible hindsight reasoning.

Yet further, Applicants submit that there is no support whatsoever in Riches for the Examiner's allegation that because Riches does not discuss a counter that decrements or resets to zero, data is not written to previously written locations. The Examiner makes an unsupportable conclusion that is not based on any teaching or suggestion in Riches to support the conclusion that the lack of discussion of decrementing or resetting to zero necessarily denotes that data is

not written to previously written locations. In fact, Riches discloses that an erase command can both erase the data on the tape and the contents of the cartridge memory. See numbered paragraph 93 of Riches. Therefore, Riches DOES discuss data being written to previously written locations. Further, Riches does discuss re-setting or re-initialization of a data cartridge, including the memory. Such re-initialization necessarily involves writing data to previously written locations.

Yet even further, Applicants submit that even if, *arguendo*, the counter in Riches enables a flag to be issued which prevents data to be written to the tape, there is no teaching or suggestion that Riches prevents data from being written to locations in the cartridge memory as well. The Examiner, at the bottom of page 3 of the Office Action, simply says that he considers the above-underlined feature satisfied by Riches, however there is no teaching or suggestion of this feature in the applied reference.

Finally, Applicants note that the Examiner states that the features upon which Applicant relies (i.e., after data is written and after the memory no longer has the capacity to store more data, a flag is set to report that the tape is read only) in the Response dated December 14, 2006, are not recited in the rejected claims. In response, Applicants submit that, in the December 14th Response, Applicants were not relying on the particular passage in parentheses above as a distinguishing feature of the claimed invention. The above-mentioned passage in parentheses was only mentioned in response to the Examiner's arguments about what Riches allegedly teaches.

At least based on the arguments set forth above, Applicants submit that Riches does not anticipate claim 1.

Applicants submit that dependent claim 10 is patentable at least by virtue of its dependency from independent claim 1.

§103(a) Rejections (Riches) - Claim 13

Applicants submit that independent claim 13 is patentable at least based on reasons similar to those set forth above with respect to claim 1.

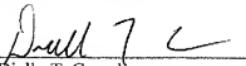
§103(a) Rejections (Riches/Malakapalli) - Claims 16 and 19

Applicants submit that claims 16 and 19 are patentable at least by virtue of their dependencies from independent claim 1. Malakapalli does not make up for the deficiencies of Riches.

Conclusion

At least based on the foregoing, Applicants respectfully request withdrawal of the rejections.

Respectfully submitted,


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